

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2265 of 1986

Date of decision:31-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHABEN BASANT THAKKAR

Versus

STATE OF GUJARAT

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Appearance:

MR KG VAKHARIA for Petitioner

Mr. H. L. Jani for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/03/97

ORAL JUDGEMENT

The petitioner has challenged in this special civil application the order of the Urban Land Tribunal, Ahmedabad, dated 28th February, 1986 passed in Appeal No.Baroda-6/86 as well as the order dated 1-12-1983 passed by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976. The case of the petitioner for determination of the Urban Land Ceiling was taken up by the Competent Authority, and under order annexure-B dated 1-12-1983, land admeasuring 648 sq.mts. of Survey No.148 was declared to be surplus. Against this order appeal was preferred by the petitioner which came to be dismissed under order dated 28-2-1986.

2. Heard the learned counsel for the parties.

The appeal has been dismissed by the Tribunal on two counts. The first ground given is that in view of the provisions of section 10(3) and(5) of the 1976 Act the appeal does not lie. The second ground is that the appeal is time barred. Challenging the correctness of the decision of the Tribunal as well as the order of the competent authority, the learned counsel for the petitioner raised manifold contentions. As I am of the opinion that the matter is to be remanded back to the Tribunal to consider the same afresh in accordance with law, I refrain myself from giving any finding on merits of the matter.

3. The Tribunal has proceeded on the ground that the petitioner has come to know about the order of the competent authority made against her on 4th May, 1984 and the appeal has been filed only on 7th October, 1985, i.e. after lapse of 14 months. The Tribunal has observed that the petitioner has not furnished any explanation whatsoever for the delay caused in filing appeal after 4-5-1984. The petitioner, after coming to know about the order of the Competent Authority dated 4-5-1984 submitted application to the Competent Authority dated 2-6-1984 and stated therein that she has not received copy of the order and prayer was made for supply of the copy of the order. This application of the petitioner was replied by the respondents under their communication dated 16th May, 1985. The Competent Authority informed the petitioner that the order dated 1-12-1983 was sent to her at her Delhi address, and if she desired to have copy of the order she could get only after depositing the requisite fees. These documents were produced by the petitioner before the Tribunal. After receipt of this letter of the Competent Authority, certified copy of the order was obtained by the petitioner on 30th September, 1985 and then the petitioner filed appeal before the Tribunal. The

petitioner's power of attorney was looking after this matter. The Tribunal has not considered this aspect of the case.

4. Whether delay constitutes sufficient cause or not is a different matter, on which this Court is not expressing any opinion, but the petitioner has advanced some explanation for the delay from 4-5-1984, which has to be considered on merits. So far as the first ground is concerned, the counsel for the petitioner contended that this is an erroneous reasoning given, in view of the later decisions of this Court. But, as stated earlier I do not consider it appropriate to go on this question when I am remanding the matter back to the Tribunal. It will be open to the petitioner to raise all the grounds available to her before the Tribunal.

5. In the result this special civil application succeeds. The order of the Tribunal dated 28-2-1986 passed in Appeal No.Baroda-6/86 is quashed and set aside and the matter is remanded back to the Tribunal to consider the same afresh on the question of limitation in filing appeal as well as on other points raised by the petitioner. It is an old matter and as such it is expected of the Tribunal that it shall decide this matter as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order. The interim relief granted earlier by this Court on 2-7-1986 shall remain in force till the matter is decided by the Tribunal. Rule made absolute accordingly. No order as to costs.

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